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ABSTRACT

This document sets out the requirements of federal law pertaining to confidentiality of student records. It provides guidance for the development of school-district policies on the handling of student records and provides a framework for legal information sharing. The paper discusses in detail each of the major federal statutes and its requirements: (1) the Family Educational Rights and Privacy Act of 1974 (FERPA); (2) the Grassley Amendment to the Goals 2000: Educate America Act; (3) 42 U.S.C. Section 290dd-2 (1994); and (4) the Education of the Handicapped Act. A review of the laws' requirements concludes that, first, each school district should develop and implement clearly stated policies and procedures regarding student records. Second, school districts should fully inform parents and eligible students of their rights, including their right of access to student records and educational materials. Parents and students should also be apprised of situations in which information can be gathered and disclosed without their consent. Finally, school districts should examine applicable state laws. Answers to frequently asked questions are also included. Appendices summarize the provisions of each federal statute and list applicable state laws. (LMI)

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CONFIDENTIALITY OF STUDENT RECORDS

A Guide For School Districts Establishing Policies And Procedures With Special Emphasis On Alcohol And Other Drug Use

November 1994

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CONFIDENTIALITY OF STUDENT RECORDS

A Guide for School Districts Establishing Policies and Procedures with Special Emphasis on Alcohol and Other Drug Use

by

J. David Yeager

November 1994

A report prepared for

Western Regional Center for Drug-Free Schools and Communities
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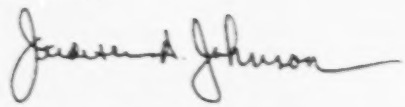
PREFACE

We realize that many of the laws on both the federal and state level have changed recently. However, it seems critical that we provide you with the most current information to date in order for you to continue to be in compliance and aware of the recent changes. Please refer to the laws within your state and to the federal guidelines as they are available. Please also feel free to copy and distribute this document, giving the Western Regional Center credit. We hope this document contributes to the overall programs that you are currently operating within the state and local arenas.

Sincerely,



Judith A. Johnson, Director
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CONFIDENTIALITY OF STUDENT RECORDS

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CONFIDENTIALITY OF STUDENT RECORDS

A Guide for School Districts Establishing Policies
and Procedures for Alcohol and Other Drug Use

I. INTRODUCTION

Public schools collect a large amount of information about their students across a wide variety of topics for the purposes of improving each individual student's education and facilitating school administration. The information collected by school districts includes, among other things, academic records, health care information, and disciplinary documentation. In addition, students are occasionally asked to provide information as part of government funded research projects. The management of all of this information, in compliance with legal requirements designed to protect students' individual privacy, has become a problem of increasing complexity.

Increased integration of services in the educational setting has increased the number of interagency communications that involve school districts. The presence of medical professionals, drug and alcohol counselors, and law enforcement personnel in schools presents myriad opportunities for the flow of information maintained in student records. In many cases, information sharing among various agencies is seen as a desirable step towards running these integrated programs in a more efficient and effective manner. Counterbalancing this desire for information sharing and efficiency, however, are concerns for students' personal privacy. This privacy interest, deeply rooted in American law, is the basis for legislation designed to protect the confidentiality of student records.

There are four major pieces of federal legislation affecting student records. The Family Educational Rights and Privacy Act of 1974 (FERPA) covers access to student records and sets parameters for disclosure to other parties. The Grassley Amendment to the Goals 2000: Educate

America Act covers parental access to instructional materials and sets limits on information gathering from students. A third statute, 42 U.S.C. § 290dd-2, covers confidentiality of substance abuse treatment records. These records, related to drug and alcohol treatment, are subjected to a different set of rules in addition to those set out in FERPA. Finally, requirements set out under the Education of the Handicapped Act provide procedural safeguards involving student records to parents of students needing special instruction services. The varying requirements of these laws make proper administration of student records a difficult proposition, especially when, as is often the case, several different agencies are participating in a student's educational experience.

This document sets out the requirements of federal law pertaining to confidentiality of student records. It is intended to provide guidance for the development of school district policies on the handling of student records and to provide a framework for legal information sharing. Each of the major federal statutes and its requirements is discussed in detail in the sections that follow. When making decisions in individual cases, school districts should always refer to the most recent versions of the applicable laws and regulations and consult with their attorney. School districts should also refer to applicable state laws, which may impose more stringent requirements on the handling of student information.[1]

II. Access to Student Records: The Family Educational Rights and Privacy Act

The major federal law covering administration of student records is The Family Educational Rights and Privacy Act of 1974, also known as FERPA or the Buckley Amendment.[2] FERPA applies to all educational institutions that receive funding through U.S. Department of Education programs.[3] FERPA gives parents certain rights regarding their children's education records. These rights transfer to the student when the student reaches eighteen years of age or enrolls in

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[1]A partial listing of applicable laws enacted by western states appears in Appendix D.

[2]Pub.L. No. 93-380, § 513(a), 88 Stat. 571 (1974) (codified at 20 U.S.C. § 1232g (1994)). FERPA's implementing regulations are found at 34 C.F.R. § 99.

[3]34 C.F.R. § 99.1 (1993).

postsecondary education.[4] Students to whom rights have transferred are called "eligible students".[5] The term "education records" is broadly defined in the statute, and includes all records maintained by a school district that contain information relating directly to a student.[6] However, the term does not include personal records kept in the sole possession of the maker and not revealed to any other person except a substitute.[7] Nor does it include the records of a law enforcement unit of a school district that were created by that unit solely for the purpose of law enforcement.[8]

The purpose of FERPA is to ensure the access of students and parents to education records and to protect the privacy of students' education records. The statute was passed in response to a perception that systematic abuse of student records was occurring across the nation.[9]

FERPA limits a school's ability to disclose data in student records to third parties without parental consent. The statute also provides parents and eligible students with a right of access to educational records directly related to them. In addition, FERPA provides a right to parents and eligible students to a hearing to challenge "inaccurate, misleading, or otherwise inappropriate" data contained in education records.[10] Specific requirements are spelled out in FERPA's implementing regulations, which are found in the Code of Federal Regulations, title 34, section 99. Schools must inform parents and eligible students of the rights accorded them under FERPA.[11]

Schools that fail to comply with FERPA can lose federal funding. This is the only express remedy provided in the statute. FERPA does not explicitly or implicitly support a private right of action.[12] However, two federal courts of appeal that have refused to find a private right of action in FERPA itself have held that violations of the statute may nonetheless provide the basis for a viable legal claim under 42 U.S.C. § 1983.[13] Thus, parents or students alleging violations of the

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[4]20 U.S.C. § 1232g(d) (1994).

[5]34 C.F.R. §99.3 (1993).

[6]20 U.S.C. § 1232g(a)(4)(A) (1994).

[7]*Id.* §1232g(a)(4)(B)(i).

[8]*Id.* § 1232g(a)(4)(B)(ii) (1994); *see also* 34 C.F.R. § 99.3 (1993).

[9]Johnson, T. Page, *Managing Student Records: The Courts and the Family Educational Rights and Privacy Act of 1974*, 79 ED. LAW REP. 1, 3 (1993).

[10]20 U.S.C. § 1232g(a)(2) (1994).

[11]*Id.* § 1232g(e).

[12]Johnson, *supra* note 9, at 4-6.

[13]*See Fay v. South Colonie Central School District*, 802 F.2d 21 (2d Cir. 1986); *Tarka v. Franklin*, 891

privacy rights created by FERPA may have an opportunity to sue school districts for injunctive relief and money damages.

A. Parents' Right to Inspect and Request Correction of Records

FERPA gives parents the right to inspect and review the educational records of their children.[14] Schools must establish appropriate procedures for granting parents access to records, and requests must be satisfied within a reasonable period not to exceed forty-five days.[15] FERPA does not require schools to provide copies of materials in education records unless parents or eligible students can't inspect the records personally.[16] Schools may charge a fee for copies of education records, but not for retrieval expenses.[17]

Parents are also given the right to challenge the content of their children's education records if they believe the records are inaccurate, misleading, or violative of the student's privacy or other rights.[18] If the school refuses to change the records, it must inform the parent or eligible student of the decision and of the right to a formal hearing.[19] If, after the hearing, the contested records are not changed, parents and eligible students have the right to place written comments regarding the contested information into the student's records.[20]

B. Release of Student Information

1. The Consent Requirement

FERPA's general rule is that student education records or other personally identifiable

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F.2d 102 (5th Cir. 1989).

[14]20 U.S.C. § 1232g(a)(1)(A) (1994).

[15]*Id.*; 34 C.F.R. § 99.10(b) (1993).

[16]34 C.F.R. § 99.10(d) (1993).

[17]*Id.* § 99.11.

[18]20 U.S.C. § 1232g(a)(2).

[19]*Id.* § 1232g(a)(2); 34 C.F.R. § 99.20 (1993). Minimum requirements for the conduct of such hearings are set out in 34 C.F.R. § 99.22 (1993).

[20]20 U.S.C. § 1232g(a)(2); 34 C.F.R. § 99.21 (1993).

information may not be released without consent given by a parent or eligible student.[21] To be valid, the consent must be in writing and must specify, at a minimum, the records that may be disclosed, the purpose of the disclosure, and the parties to whom disclosure may be made.[22]

2. *Exceptions to the Consent Requirement*

FERPA provides for several situations in which information can be released to certain individuals without consent. These individuals include:

- School employees with legitimate educational interests;
- Certain state and federal educational authorities performing governmental functions;
- Appropriate parties in connection with provision of financial aid to the student;
- State and local officials to whom disclosure was authorized by a state statute adopted before November 9, 1974;
- Organizations performing certain studies for the school;
- Parents of a student who is their dependent; and
- Appropriate persons when an emergency makes disclosure necessary to protect human health or safety.[23]

Records may also be released to officials at other schools in which the student is seeking to enroll, but parents must be notified of the transfer and given an opportunity to receive a copy of the record.[24] Schools may also release student records without consent when the release is made pursuant to a court order or lawfully issued subpoena.[25] In this situation, the school must notify the parent or eligible student in advance of compliance with the order.[26]

Each school district must maintain a record for each student, logging all requests for information from that student's records.[27] This log must indicate specifically the legitimate interest held by the person requesting the information.[28] If information is disclosed, it must be on the

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[21] 20 U.S.C. § 1232g(b).
[22] 34 C.F.R. § 99.30 (1993).
[23] *Id.*
20 U.S.C. § 1232g(b)(1)(B).
[25] *Id.* § 1232g(b)(2)(B); 34 C.F.R. § 99.31(a)(9).
[26] 20 U.S.C. § 1232g(b)(2)(B); 34 C.F.R. § 99.31(a)(9).
[27] 20 U.S.C. § 1232g(b)(4)(A); 34 C.F.R. § 99.32 (1993).
[28] 20 U.S.C. § 1232g(b)(4)(A).

condition that the recipient will not share the information with others; such redisclosure is prohibited without the prior written consent of the parent or eligible student.[29]

3. Directory Information

Another major exception to the consent requirement is the FERPA provision covering "directory information".[30] Information designated by a school district as directory information may be released without consent.[31] Directory information includes, but is not limited to the following:

- The student's name;
- Address;
- Telephone listing;
- Date and place of birth;
- Major field of study;
- Participation in officially recognized activities and sports;
- Weight and height of members of athletic teams;
- Dates of attendance;
- Degrees and awards received; and
- The most recent previous educational institution attended by the student.[32]

Directory information may also include any other data that generally would not be considered harmful or an invasion of privacy if disclosed.[33] The categories of data to be treated as directory information may be designated by individual school districts. Before making directory information available, a school must give public notice of the categories of information it is designating as directory information.[34] Parents must be given an opportunity to inform the school district that such information may not be released without consent.[35]

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[29]34 C.F.R. § 99.33 (1993).
[30]20 U.S.C. § 1232g(a)(5)(A).
[31]*Id.* § 1232g(b)(2).
[32]*Id.*; 34 C.F.R. § 99.3 (1993).
[33]34 C.F.R. § 99.3 (1993).
[34]20 U.S.C. § 1232g(a)(5)(B). Schools may release directory information about former students without providing such notice.
[35]*Id.*

C. What School Districts Must do to Ensure Compliance with FERPA

1. Policy Adoption

Each school district must adopt a written policy detailing how it will effect compliance with FERPA's mandates. Copies of this policy must be available to parents and eligible students upon request. At a minimum, a school district's written policy must include the following:

- A statement of how the school district will annually inform parents and students of their FERPA rights;
- The procedure for parental inspection and review of records;
- A statement that personally identifiable information will not be released without the prior written consent of a parent or eligible student, along with a list of excepted situations in which consent is not required;[36]
- A list of school employees deemed to have legitimate educational interests in viewing student records, along with a statement of what the school district considers to be legitimate educational interests;
- A statement that a record of disclosures will be maintained and be made available for inspection by parents and eligible students;
- A specification of the types of information designated by the school district as "directory information"; and
- A statement of the right of parents and eligible students to request correction of the student's records and obtain a hearing.[37]

2. Annual Notification

Each year, a school district must notify the parents of students currently in attendance of their rights under FERPA. This statement must include, at a minimum, a statement that parents and eligible students have rights to:

- Inspect and review the student's education records;
- Request amendment of records believed to be inaccurate, misleading or otherwise in violation of the student's privacy or other rights;

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[36] *See supra* note 23 and accompanying text.

[37] 34 C.F.R. § 99.6 (1993).

- Withhold consent to disclosures of personally identifiable information;
- File with the U.S. Department of Education complaints regarding the school district's failure to comply with FERPA;
- Obtain a copy of the school district's written policy on FERPA compliance, along with a statement of the places where copies of the policy are located.[38]

The school district may provide this notice by any means reasonably likely to inform parents and eligible students of their rights.[39] This may be in the form of a special letter, a PTA bulletin, a student handbook, or a newspaper article.[40] School districts must ensure effective notification of parents and eligible students whose primary language is not English.[41]

III. Collecting Information from Students: Requirements of the Grassley Amendment to the Goals 2000: Educate America Act

On March 31, 1994, Congress passed the Goals 2000: Educate America Act[42], including the Grassley Amendment addressing student privacy with regard to surveys, analyses, and evaluations. The Grassley Amendment replaced and modified the Hatch Amendment to the General Education Provisions Act, codified at 20 U.S.C. § 1232h. It expanded the language of the Hatch Amendment to cover *all* survey, analysis, or evaluation projects, where before only research programs aimed at developing new teaching methods were covered. The Grassley Amendment also added new language covering enforcement.[43] School districts are required to notify parents and students of their rights under the Grassley Amendment.[44]

The Grassley Amendment grants parents, guardians, or eligible students the right to inspect certain materials used in schools. All instructional materials, including teacher's manuals, films, tapes, or other materials used in connection with any survey, analysis, or evaluation must be made

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[38] *Id.* § 99.7 (1993).
[39] *Id.*
[40] LARSON, LISA, RESEARCH DEPARTMENT, MINNESOTA HOUSE OF REPRESENTATIVES, FEDERAL AND STATE LAWS GOVERNING ACCESS TO STUDENT RECORDS 2 (1994).
[41] 34 C.F.R. § 99.7(d) (1993).
[42] Pub.L. No. 103-227, § 1017, 108 Stat. 125 (1994).
[43] *Id.*
[44] *Id.*

available for inspection by parents or guardians of children.[45]

The Grassley Amendment also imposes a consent requirement on certain types of information gathering projects. Written consent of parents or eligible students must be secured before requiring student participation in any survey, analysis, or evaluation that reveals information concerning:

- Political affiliations;
- Mental and psychological problems potentially embarrassing to the student or family;
- Sex behavior and attitudes;
- Illegal, anti-social, self-incriminating and demeaning behavior;
- Critical appraisals of other individuals with whom the students have close family relationships;
- Legally recognized privileged or analogous relationships, such as those of physicians, lawyers, or ministers; or
- Income, except for that information required to determine eligibility for financial assistance.[46]

School districts must secure the proper consent in writing before administering compulsory survey programs addressing these topics. The statute does not apply, however, to information gathering activities that are purely voluntary.

IV. Confidentiality of Drug and Alcohol Abuse Patient Records

Records relating to persons receiving treatment for drug or alcohol abuse under programs assisted in any way by the federal government are also given confidentiality protection under federal law. Under 42 U.S.C. § 290dd-2, the records of substance abuse treatment patients are confidential and may only be disclosed under certain narrow circumstances.[47]

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[45] *Id.*

[46] *Id.*

[47] 42 U.S.C. § 290dd-2 (1994). This section applies to both alcohol and drug abuse treatment patients. Statutory authority for confidentiality of drug abuse patient records formerly appeared at 42 U.S.C. § 290ee-3, while authority for confidentiality of alcohol abuse patient records formerly appeared at 42 U.S.C. § 290dd-3. These sections were combined in 42 U.S.C. § 290dd-2 by the Alcohol Drug Abuse and Mental Health Administration Reorganization Act of 1992, Pub.L. No. 102-321, § 131, 106 Stat. 368 (1992). The implementing regulations are located at 42 C.F.R., Part 2 (1993).

A. Confidentiality Requirement

The confidentiality requirements apply to all records of the identity, diagnosis, prognosis, or treatment of any patient involved in any federally assisted substance abuse education, prevention, training, treatment, rehabilitation, or research program.[48] The restrictions cover virtually all information obtained by a program.[49] Written records subject to these regulations must be maintained in locked condition in a secure room with controlled access.[50] As a general rule, such records may only be disclosed with the prior written consent of the patient.[51] If a minor patient has legal capacity, under applicable state law, to apply for and obtain treatment, then that patient's consent is required for any disclosure, including disclosure to the patient's parents.[52] If state law requires parental consent to obtain treatment, then consent of both the minor patient and parent are required for disclosure.[53] As with education records, there is a prohibition on redisclosure (without written consent) imposed on parties receiving confidential information.[54] Under the law, patients must be notified of these federal confidentiality requirements.[55]

Under the statute, the following disclosures may be made without consent:

- To medical personnel in the case of a bona fide medical emergency;
- To qualified personnel conducting scientific research or audits, so long as individual patient identities are not disclosed in any reports;
- To any person with an appropriate court order.[56]

This section also forbids the use of substance abuse treatment records to conduct a criminal investigation or to substantiate criminal charges against any patient.[57]

Substance abuse treatment records maintained by schools are subject to the requirements of 42 U.S.C. § 290dd-2. These requirements differ from FERPA and are, in most instances, stricter.

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[48] 42 U.S.C. § 290dd-2(a) (1994).
[49] *Id.* § 2.12(e) (1993).
[50] *Id.* § 2.16.
[51] 42 U.S.C. § 290dd-2(b). The required form of written consent is detailed in 42 C.F.R. § 2.31 (1993).
[52] 42 C.F.R. § 2.14(b) (1993).
[53] *Id.* § 2.14(c).
[54] *Id.* § 2.32.
[55] *Id.* § 2.22.
[56] 42 U.S.C. § 290dd-2(b); 42 C.F.R. §§ 2.51-2.53, 2.61 (1993).
[57] 42 C.F.R. § 2.12(a)(2) (1993).

Substance abuse treatment records should therefore be maintained separately from other education records so these heightened confidentiality requirements can be met. Violation of the confidentiality requirements of 42 U.S.C. § 290dd-2 may result in criminal penalties.[58]

V. Procedural Safeguards in the Education of the Handicapped Act

The Education of the Handicapped Act provides procedural safeguards to parents of students needing special instruction services.[59] Under this statute and the accompanying administrative regulations,[60] parents of such students are entitled to notice, access to records, a hearing, and representation of counsel with respect to actions regarding the identification, evaluation, or educational placement of the student.[61]

VI. Conclusion

The various mandates of the laws and regulations presented here can be difficult to follow, and they require close attention. School districts should use this basic information to proceed in fulfilling the requirements of these programs. First, each school district should develop and implement clearly stated policies and procedures regarding student records. Districts should carefully examine each set of records they maintain and determine what legal requirements apply to them. In making these determinations, and in making decisions in individual cases, several questions must be considered:

- Is the information confidential?;
- Should the record be kept separate from other records?;
- Are there restrictions on disclosure (i.e., is consent required)?;
- Are there specific exceptions which allow disclosure?; and
- What type of notification is required, if any?

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[58] *Id.*, § 2.4.
[59] 20 U.S.C. § 1415 (1994).
[60] 34 C.F.R. § 104.36 (1993).
[61] *Id.*

Second, school districts should fully inform parents and eligible students of their rights under the laws, including their rights of access to student records and educational materials. Parents and eligible students should also be apprised of the situations in which information can be gathered and disclosed without their consent. In all cases, school districts must also examine applicable state laws which may impose additional requirements. Because of the complexity of these issues, school districts are advised to seek legal counsel before taking action.

VII. Frequently Asked Questions

Q: What kind of notification must be provided to parents and eligible students and when?

A: School districts need to provide notification in the following situations:

- Each year, a school district must notify the parents of students currently in attendance of their rights under FERPA. A school district may provide notice by any means reasonably likely to inform parents and eligible students of their rights. This may be in the form of a special letter, a PTA bulletin, a student handbook, or a newspaper article;
- A school must give public notice of the categories of information it is designating as directory information;
- When records are released to officials at other schools in which a student is seeking to enroll, parents or eligible students must be notified of the transfer and given an opportunity to receive a copy of the record;
- When records are released pursuant to a court order or lawfully issued subpoena, a school must notify the parent or eligible student in advance of compliance with the order;
- School districts are required to notify parents and eligible students of their rights under the Grassley Amendment to inspect certain educational materials and withhold consent to certain information gathering activities.

In each situation, school districts must ensure effective notification of parents and eligible students whose primary language is not English.

Q: What student records are subject to confidentiality and consent requirements?

A: FERPA's confidentiality requirements apply to any record of information maintained by a school or its agent and recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche. These records may not be disclosed without prior written consent. There are a few statutory exceptions:

- Personal records made by individual school staff members, kept in their personal possession, and made available to no one other than the staff member's temporary substitute;
- Employment records used only in relation to a student's employment by the

school district;

- Alumni records containing information about a student after no longer attending the district; and
- Records of a law enforcement unit of a school district, maintained solely for law enforcement purposes, maintained separately from other educational records, and disclosed only to law enforcement officials of the same jurisdiction.

Q: What information can be released to individuals, the press, or the general public without consent?

A: Generally, information which is not "personally identifiable" (i.e., information which does not make the student's identity traceable) may be released. Typically, aggregated data in the form of program evaluation reports and schoolwide achievement reports will fall into this category. Additionally, information properly designated as "directory information" may be released without consent. However, under no circumstances may personally identifiable information regarding a student's participation in alcohol or drug use assistance programs be disclosed without prior written consent.

Q: Are there certain parties to whom confidential student records may be provided without consent?

A: Yes; school districts may disclose confidential information to the following parties without prior written consent:

- School employees with a "legitimate educational interest";
- Other schools to which a student is transferring;
- Certain government employees carrying out official functions;
- Appropriate parties in connection with financial aid to a student;
- Organizations doing studies for the school;
- Accrediting agencies;
- Persons who need to know in the case of emergencies threatening health or safety; and
- Persons with a court order or lawfully issued subpoena.

School districts must keep records of all such requests and disclosures.

Q: When is parental consent required to obtain information?

A: The Grassley Amendment provides limitations on compulsory information gathering activities by school districts. The statute applies when school districts *require* students to provide information on particular topics; it does not apply to *voluntary* information gathering. The provisions of the Grassley Amendment apply only if funds provided by the U.S. Department of Education are used to conduct the program under which the information is sought. Topics covered by the Grassley Amendment's consent requirement are listed at 20 U.S.C. § 1232h, which should be consulted before any information gathering activities are planned. If parental consent is required before surveying students, the requirements of the Grassley Amendment apply regardless of how the information is to be used or reported.

Q: Should certain types of records be kept separate from other school records?

A: Yes, although it will further complicate student recordkeeping systems. Records of alcohol and drug use assistance programs should be kept separately because different confidentiality and consent requirements apply to such records. Records of law enforcement units of educational institutions should be kept separate from other education records to preserve their exemption from "education records" status under FERPA.

APPENDIX A: THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974, 20 U.S.C. § 1232g (1994)

The Family Educational Rights and Privacy Act of 1974 (FERPA)

Pub.L. No. 93-380, Title V § 513(a), 88 Stat. 571 (codified at 20 U.S.C. § 1232g (1994)).

20 U.S.C. § 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

* * *

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the contents of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include--

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or who is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section, the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be releases without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record.

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title), or (iv) State educational authorities under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to a State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organization in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate

persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number and type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless--

(A) there is written consent from the student's parent specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) and administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

* * *

(c) Surveys or data gathering activities; regulations

The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the

rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or student of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents or students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this chapter, except that action to terminate assistance may be taken only if the Secretary finds that there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department of Education for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

APPENDIX B: THE GRASSLEY AMENDMENT TO THE GOALS 2000: EDUCATE AMERICA ACT, 20 U.S.C. § 1232h (1994)

Grassley Amendment to the Goals 2000: Educate America Act

Pub.L. No. 103-227, § 1017, 108 Stat. 125 (codified at 20 U.S.C. § 1232h (1994)).

20 U.S.C. § 1232h. Protection of pupil rights.

(a) All instructional materials, including teacher's manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children.

(b) No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning--

(1) political affiliations;

(2) mental and psychological problems potentially embarrassing to the student or his family;

(3) sex behavior and attitudes;

(4) illegal, anti-social, self-incriminating and demeaning behavior;

(5) critical appraisals of other individuals with whom respondents have close family relationships;

(6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program),

without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

(c) Educational agencies and institutions shall give parents and students effective notice of their rights under this section.

(d) ENFORCEMENT.--The Secretary shall take such action as the Secretary determines appropriate to enforce this section, except that action to terminate assistance provided under an applicable program shall be taken only if the Secretary determines that--

(1) there has been a failure to comply with such section; and

(2) compliance with such section cannot be secured by voluntary means.

(e) OFFICE AND REVIEW BOARD.--The Secretary shall establish or designate an office and review board within the Department of Education to investigate, process, review, and adjudicate violations of the rights established under this section."

APPENDIX C: CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS, 42 U.S.C. § 290dd-2 (1994)

Pub.L. No. 102-321, Title I, Subtitle C, § 131, 106 Stat. 368 (codified at 42 U.S.C. § 290dd-2 (1994)).

42 U.S.C. § 290dd-2. Confidentiality of records

(a) Requirement. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e), be confidential and disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).

(b) Permitted disclosure. (1) Consent. The content of any record referred to in subsection (a) may be disclosed in accordance with the proper written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g).

(2) Method for disclosure. Whether or not the patient, with respect to whom any given record referred to in subsection (a) is maintained, gives written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Use of records in criminal proceedings. Except as authorized by a court order granted under subsection (b)(2)(C), no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Application. The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when such individual ceases to be a patient.

(e) Nonapplicability. The prohibitions of this section do not apply to any interchange of records--

(1) within the Armed Forces or within those components of the Department of Veterans Affairs furnishing health care to veterans; or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalties. Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined in accordance with title 18, United States Code.

(g) Regulations. Except as provided in subsection (h), the Secretary shall prescribe regulations to carry out the purposes of this section. Such regulations may contain such

definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C), as in the judgment of the Secretary are necessary and proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

* * *

Family Educational Rights and Privacy Act

Summary of Major Provisions

Agencies and Programs Covered:

All educational agencies receiving funds from the U.S. Department of Education are subject to these requirements. Therefore, virtually all school districts must comply.

Who Has Rights and Can Give Consent:

A student who is 18 or older, or the parent of a student who is not yet 18, can exercise the rights and give the necessary consent.

Policy Requirements:

A school district must adopt, make available, and annually notify eligible students and parents of district policies regarding student records, including policies on collection and disclosure of information, inspection of records and educational materials, amendment of records, and notification of parental and student rights.

Right to Inspect Records:

A school district must permit an eligible student or parent to inspect and obtain a copy of student records within a reasonable time, not to exceed 45 days.

Right to Amend Records:

An eligible student or parent who believes that information contained in a student's records is inaccurate, misleading, or in violation of the student's privacy or other rights, may request that the records be amended. If a school district refuses to amend the records, it must inform the student or parent and advise them of their right to a hearing. Such hearing must be held within reasonable time, and the student or parent must be given advance notice and an opportunity to present evidence with assistance of counsel. Based on evidence presented at the hearing, the school district may decide the information is inaccurate and amend the record, or the district may decide the information is accurate and inform the student or parent, who may then place comments in the records.

Right to Confidentiality:

A school district must obtain the written consent of the eligible student or parent before disclosing personally identifiable information from student records, except:

- To other school officials, including teachers, having legitimate educational interests;
- To officials of another school where the student seeks to enroll;
- To the U.S. Comptroller General, U.S. Secretary of Education, or state educational authorities;
- In connection with a student's application for financial aid;
- To state and local authorities, if authorized by a state statute in effect before November 9, 1974.
- To accrediting organizations;
- To organizations conducting certain studies for the school;
- To parents of a dependent student;
- To comply with a court order or subpoena;
- To appropriate parties in a health or safety emergency.

A school district must keep a record of each request and disclosure. "Directory information" may be disclosed without parent or student consent.

Grassley Amendment to the Goals 2000: Educate America Act

Summary of Major Provisions

Agencies and Programs Covered:

The Grassley Amendment applies to all survey, analysis, or evaluation projects supported by funds from the U.S. Department of Education.

Who Has Rights and Can Give Consent:

An adult or emancipated minor student, or the parent or guardian of an unemancipated minor student can exercise the rights or give the required consent.

Policy Requirements:

School districts must obtain consent before administering *involuntary* information gathering projects revealing certain types of information. In addition, school districts must notify parents and eligible student of their rights under the Amendment.

Right to Inspect Records:

Parents have the right to inspect all instructional materials, including teacher's manuals, films, tapes, or other materials used in connection with any survey, analysis, or evaluation.

Right to Confidentiality:

A school district must obtain the written consent of the eligible student or parent before submitting a student to any survey, analysis, or evaluation which reveals information concerning:

- Political affiliations;
- Mental and psychological problems potentially embarrassing to the student or family;
- Sex behavior and attitudes;
- Illegal, antisocial, self-incriminating, and demeaning behavior;
- Legally recognized, privileged, and analogous relationships, such as those with lawyers, physicians, and ministers;
- Income, other than that required by law to determine the student's eligibility for financial assistance or program participation.

42 U.S.C. § 290dd-2

Summary of Major Provisions

Agencies and Programs Covered:

Any program which is federally assisted, directly or indirectly, to provide alcohol or other drug use diagnosis, treatment, or referral for treatment is subject to the requirements of this section.

Who Has Rights and Can Give Consent:

A student who has reached the age of majority under applicable state law, or the age of 18 if none is specified, or if a minor acting alone has the legal capacity to obtain treatment, can exercise the rights and give the required consent. Both the student and the parent must give consent for a minor if state law requires the parent's consent to obtain alcohol or drug abuse treatment.

Policy Requirements:

Each program must adopt written procedures which regulate and control access to records, which must be maintained in a secure room or container. At the time of admission to a program, a student must be informed that records are confidential and be provided a written summary of the law and regulations.

Right to Inspect Records:

A student may have access to his or her own records, including the opportunity to copy them.

Right to Confidentiality:

Records of the identity, diagnosis, prognosis, or treatment of any student in connection with any alcohol or other drug use prevention activity are confidential and may not be disclosed without the student's or parent's written consent, except:

- To medical personnel for purposes of treating the student in an emergency; or
- To qualified personnel conducting scientific research, management audits, financial audits, or program evaluations which do not identify individual students.

APPENDIX E: LIST OF APPLICABLE STATE LAWS

The following is a list of laws, from the western states, relating to confidentiality of student records. This list is by no means exhaustive, and school districts should consult the most recent editions of state codes and administrative regulations before taking action on confidentiality issues.

Alaska

ALASKA STAT. § 14.30.272 (1994). Parents of exceptional children; right to inspect records.

ALASKA STAT. § 14.03.110 (1994). Surveys.

ALASKA ADMIN. CODE tit. 4, §§ 52.500-52.620 (1994).

California

CAL. EDUC. CODE § 49060 (West 1994). Pupils' records.

CAL. CIVIL & CRIMINAL CODE § 1798 et seq. (West 1994). Information practices act.

Hawaii

HAW. REV. STAT. Ch. 92F (1994). Uniform Information Practices Act.

Idaho

IDAHO CODE § 18-4511 (1994). School duties--records of missing children.

IDAHO CODE § 32-717A (1994). Parents' access to records and information.

IDAHO CODE § 33-209 (1994). Transfer of student records.

Montana

MONT. CODE ANN. § 41-5-601 (1994). Confidentiality; Youth Court Act.

MONT. CODE ANN. § 40-4-225 (1994). Access to records by noncustodial parents.

MONT. CODE ANN. § 20-1-212 (1994). Retention of student records.

Oregon

OR. REV. STAT. § 326.565 (1993). Standards for student records.

OR. REV. STAT. § 326.575 (1993). Records when student transfers.

Washington

WASH. REV. CODE § 26.09.225 (1994). Parental access to child's education and health care records.

WASH. REV. CODE § 13.34.105 (1994). Guardian ad litem access.

WASH. REV. CODE § 28A.600.475 (1994). Exchange of information with law enforcement.